United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

74-1548 ORIGINAL

To be argued by
ROBERT L. TUTTLE

In The

United States Court of Appeals

For The Second Circuit

B
P/S

ANNELOU TEIXEIRA, individually and on behalf of all other persons similarly situated,

Plaintiff-Appellant,

vs.

MORAL RE-ARMAMENT, INC., UP WITH PEOPLE INCORPORATED and KIDDER, PEABODY AND COMPANY,

Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of New York

BRIEF FOR APPELLEE MORAL RE-ARMAMENT, INC.

ROBERT L. TUTTLE
Attorney for Defendant-Appellee
Moral Re-Armament, Inc.
36 West 44th Street
New York, New York 10036
(212) 869-0920

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TABLE OF CONTENTS

Brief

TABLE OF CITATIONS

Cases Cited:

Contents

Contents

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- x

ANNELOU TEIXEIRA, individually and on behalf of all other persons similarly situated,

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v.

MORAL RE-ARMAMENT, INC., UP WITH PEOPLE INCORPORATED and KIDDER, PEABODY AND COMPANY,

Defendants-Appellees.

Docket No. 74-1547

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BRIEF OF DEFENDANT-APPELLEE MORAL RE-ARMAMENT, INC.

Counter-statement of Issues for Review

In addition to the issues stated in Appellant's Brief (p. 1) by counsel for plaintiff-appellant (hereafter "Teixeira"), namely, the propriety of the District Court's (1) denial of class suit designation and (2) granting of summary judgment to defendant-appellee Up With People Incorporated (hereafter "UWP"), the following issues are raised by this appeal:

(3) Whether the interlocutory order denying class suit designation is appealable.

(4) If so, whether representation by Teixeira will fairly and adequately protect the interests of the class.

(5) Whether the complaint should be dismissed on the merits on the ground the case is entirely void of merit.

Counter-statement of the Case

In her prayer for relief in the complaint (11a) Teixeira seeks on behalf of herself and the class to enjoin defendant-appellees Moral Re-Armament, Inc. (hereafter "MRA") and Kidder, Peabody and Company ("Kidder") from transferring any of the monies contributed by Teixeira and the other members of the class to MRA's Life Investment Fund "except in furtherance of the purposes and goals of MRA, as set forth in its Certificate of Incorporation;" and to enjoin UWP from accepting any such monies from MRA; and seeks costs and disbursements and attorneys' fees. Teixeira's counsel (App. Br., p. 2) incorrectly states: "Plaintiff, on behalf of herself and all of the persons who have made such contributions, seeks to compel MRA to apply such contributions to the express purposes of the Moral Re-Armament movement as set forth in its certificate of incorporation...." However,

no such relief is sought in the complaint, which seeks only an injunction. According to counsel's statement (pp. 2, 3-4, 7) the relief sought is an injunction against future gifts by MRA to UWP.

Counsel fails to state that defendant-appellee Kidder answered the complaint as shown by the Docket Entries (2a). Although Kidder was included in the Notice of Appeal (120a) and participated in the pre-argument conferences before the Staff Counsel of this Court, Teixeira's counsel has dropped Kidder as a party to this appeal and from the caption of the case without any court order having been made under FRCP 21 dropping it as a party.

Counsel states (p. 3) that this appeal is taken pursuant to 28 U.S.C. §1291. However, the order is clearly not final, but interlocutory, because claims remain pending against MRA and Kidder. (Moore's Federal Practice, ¶54.30 [2.-1], p. 452). The question of appealability of the class action order will be discussed under Point I, infra.

Counter-statement of Facts

At p. 4 counsel for Teixeira, quoting from MRA's certificate of incorporation, omit other important powers, namely:

Art. 2.D.(1): "For use in furtherance of the aforesaid purposes and objects to receive donations, subscriptions, contributions or bequests either in the form of money or other property."

Art. 2.D.(3): "To do all such other things as are incidental or conducive to the attainment of the above objects or any of them."

A certified copy of MRA's certificate of incorporation is part of the record (45a, para. 5).

At p. 5 Teixeira's counsel refer to the allegation in the complaint (9a, para. 15) that MRA represented to Teixeira and the members of the class that their contributions to MRA's Life Investment Fund would be used for the goals and purposes reflected in MRA's certificate of incorporation. The complaint also alleges (7a, para. 9) that Teixeira and her attorneys investigated the activities and affairs of MRA and "are fully familiar with the facts of this case whereby each member of the class was solicited for and did enter into the certain Life Income Agreements with MRA relying upon the representation that the money would be used for the purposes expressed in the Certificate of Incorporation of MRA," and Teixeira's attorney signed the complaint. However, no such facts were set forth by Teixeira or her attorneys in opposing the motions for

summary judgment in the District Court (60a-80a, 81a-87a). In any event, since MRA is a New York Not-for-Profit Corporation (43a), it is implicit that any funds it receives shall be used for its corporate purposes in accordance with Art. 2.D.(1) of its certificate of incorporation (supra, p. 4).

Teixeira's counsel go on to say (p. 5): "Clearly, the corporate purposes of MRA are of a religious nature...." As confirmed by the New York Court of Appeals, MRA's "stated purposes of incorporation were the advancement of Christian religion, the dissemination of Christian teachings and the engagement in activities of a religious, charitable or educational nature to carry out said purposes." (Matter of Oxford Group-Moral Re-Armament, MRA, Inc. v. Sweet, 309 N. Y. 744 (1955).) MRA's purposes have been the same since its incorporation in 1941 to date.

Teixeira's counsel have completely omitted from their statement of facts any reference whatsoever to prior litigation conducted by Teixeira's attorneys on behalf of another New York Not-for-Profit Corporation originally named "The Oxford Group - M.R.A.", now known after amending its certificate of incorporation as "Caux Challenge - U.S.A."

(hereafter "Caux") -- see 38a-40a, 84a-87a, 94a-96a. The file of the Supreme Court, New York County, Index No. 4472-1971 of that proceeding entitled "Matter of the Application of Moral Re-Armament, Inc., Petitioner, for an Injunction Pursuant to Sections 133, 135 and 397 of the General Business Law against The Oxford Group - M.R.A. et al." was requisitioned from the New York County Clerk for use on the motions for summary judgment before the District Judge (38a).

The principals of Caux, a group of people who were formerly associated with MRA in fiduciary relationships and broke away to form their own non-profit corporation patterned after MRA in order to confuse and deceive the public and divert contributions from MRA, are still represented by Teixeira's attorneys. Since the opinion and order appealed from were made by the District Judge, Caux has been held in contempt of the Supreme Court of the State of New York for the second time and fined $250 by an order entered June 27, 1974 (Hon. Sidney H. Asch) and has taken an appeal which has been ordered to be perfected not later than the October 1974 Term of the Appellate Division, 1st Department.

While Mr. Vondermuhll, the Secretary and a Director of MRA, preferred not to raise the question of the lack of good faith of Teixeira in his affidavit supporting MRA's motion for summary judgment, he was convinced that she had been misled in the institution of this action (94a). Facts learned at the pre-argument conferences in this Court raise serious questions about Teixeira's good faith. Teixeira's counsel in their statement of facts completely avoid any reference to the pre-argument conferences held before the Staff Counsel of this Court. During those conferences Teixeira's attorney, Thomas F. Tivnan, Esq., admitted (1) that Teixeira is a supporter of Caux and the dissident group whom he represents in the injunction and contempt proceedings in the Supreme Court, New York County, and (2) that he was taking his instructions with respect to the prosecution and settlement negotiations in this action and appeal not from Miss Teixeira, a Dutch national residing in Italy with whom he had never discussed this action, but from Mr. Paul S. Campbell and other principals of Caux. The record of the pre-argument conferences will show that MRA, in order to avoid the further loss of time and expense, agreed to comply with numerous settlement proposals encouraged

by the Staff Counsel, each of which was rejected by Mr. Tivnan on instructions from Mr. Campbell and other principals of Caux, even though under the proposals being considered at the end of the pre-argument conferences Teixeira would have obtained greater relief for herself than she seeks in this action. Thus, it became apparent that Mr. Tivnan and Caux desired only that this appeal should proceed in any event, with the possibility of having the action designated a class action so they could use it as a device for obtaining discovery into the names and particulars of MRA's contributors, as well as for the propaganda value of the pendency of this action for injunction to offset the unfavorable results of the injunction and contempt proceedings in the Supreme Court, New York County.

In Point II, infra, it will be shown that the interrelationship between Teixeira, her attorneys and Caux render her representation of the class unfair and inadequate.

In Point III, infra, it will be shown that if the interlocutory order is appealable, the Court should dismiss the complaint on the ground the case is completely without merit.

Argument

POINT I

THE ORDER DENYING CLASS SUIT DESIGNATION IS INTERLOCUTORY AND NOT APPEALABLE.

Where, as here, there are still claims pending and not adjudicated by the order appealed from, an order refusing class suit designation is not appealable unless its effect, for all practical purposes, is to terminate the litigation -- the District Court's order must be the death knell of the action.

Korn v. Franchard, 443 F. 2d 1301 (2d Cir. 1971);

Caceres v. International Air Transport Association, 422 F. 2d 141 (2d Cit. 1970);

Eisen v. Carlisle & Jacquelin, 370 F. 2d 119 (2d Cir. 1966);

Moore's Federal Practice, ¶110.13[9], pp. 184-5.

Teixeira's monetary interest in this litigation is based on her contributions to MRA's Life Investment Fund aggregating $50,000.25 (Exs. A and B to the complaint; 106a). Her contribution was an absolute gift to MRA subject only to her right to receive the income therefrom for life (107a). In 1965 Teixeira was 54 years of age and financially

independent (29a), and according to standard valuation tables the value of her life interest is still .35911 or $17,955.50 (Table I, Federal Tax Regulations, §20.2031-7).

See Falk v. Dempsey-Tegeler & Co., 472 F. 2d 142 (9th Cir. 1972), where it was held that the "death knell" doctrine would not apply where plaintiff's stake was $14,125.

Teixeira stated in her affidavit opposing the motions for summary judgment in the District Court (74a, para. 13) that she intends "to use every legal remedy available to me to prohibit MRA from applying my contribution and the contributions of the members of the class to purposes that do not coincide with the teachings of Dr. Buchman and the moral re-armament movement." Her attorney, Mr. Tivnan, in his affidavit (87a) describes her contribution as "substantial."

It is clear that Teixeira has adequate resources, a substantial individual claim, and the intention to continue to prosecute the action in her own behalf. In fact, she has already taken steps on her own behalf. After the District Court's order and during the pre-argument conferences before the Staff Counsel, Teixeira served notices to take the depositions of MRA and Kidder, which have been adjourned

until 60 days after the determination of MRA's motion to reargue the District Court's decision denying its motion for summary judgment, and that motion for reargument was in turn adjourned by the District Court without date pending the determination of this appeal. Accordingly, it is respectfully submitted that the "death knell" rule does not apply to make this interlocutory order appealable.

POINT II

DENIAL OF CLASS SUIT DESIGNATION WAS A PROPER EXERCISE OF THE BROAD DISCRETION OF THE DISTRICT COURT, AND BESIDES TEIXEIRA CANNOT FAIRLY AND ADEQUATELY REPRESENT THE CLASS.

In duPont v. Perot, 59 F.R.D. 404 (S.D.N.Y. 1973), District Judge Tenney, after pointing out (at p. 409) that this Court has held that "'the judgment of the trial judge should be given the greatest respect and the broadest discretion, particularly if . . . he has canvassed the factual aspects of the litigation.' City of New York v. International Pipe & Ceramics Corp., 410 F. 2d 295, 298 (2d Cir. 1969)," went on to enumerate the elements of FRCP 23(a)(4) to be considered before determining the adequacy of representation, namely (at p. 410):

"(1) whether the interests of the named plaintiff are coextensive with the interests of the other members of the proposed class; (2) whether his interests are in any way antagonistic to the interest of the proposed class; and (3) any other facts bearing on the ability of the named party to speak for the proposed class. 3B Moore, Fed. Prac., ¶23.07[1]."

The Court also noted (p. 412, fn. 2) that the fact that no other member of the purported class has attempted to intervene, while not essential, is a factor to be considered in determining the class action motion.

In our case, the District Court had before it voluminous factual aspects of this litigation as well as the prior litigation conducted by Teixeira's counsel, Mr. Tivnan, on behalf of Caux, of which Teixeira is a supporter and whose principals have been instructing Mr. Tivnan in the prosecution of this action and appeal. In the prior litigation the Supreme Court, New York County, found in its decision dated June 24, 1971 (Asch, J.):

"On the facts now before the court it is clear that respondent's use of its name is confusing and misleading to the public."

(In that proceeding the respondent Caux was then known as "The Oxford Group - M.R.A.", and MRA sought to enjoin it from such use of MRA's identity.)

By an injunction entered August 10, 1971, Caux

represented by Mr. Tivnan was enjoined from various conduct "which may deceive or mislead the public as to [Caux's] identity or the connection of [Caux] with [MRA] . . ."

An order entered April 28, 1972 (Streit, J.) held Caux, represented by Mr. Tivnan, in contempt of court for willfully disobeying the injunction and adjudged that Caux's misconduct "was calculated to and did defeat, impair, impede and prejudice the rights and remedies of [MRA]" and fined Caux. Mr. Tivnan's appeal, motion for reargument of the appeal and application for leave to appeal to the Court of Appeals of the State of New York were unsuccessful.

When Caux still continued to disobey the injunction, it was held in contempt of court and fined a second time by an order and decision entered June 27, 1974 (Asch, J.) which again found that Caux, still being represented by Mr. Tivnan, acted "to defeat, impair, impede and prejudice the rights of [MRA] . . ."

It was brought to the District Court's attention that Caux, before being held in contempt of court the first time, had not complied with the injunction on "advice of counsel" (40a), and that at the same time Caux had stated

after conferring with its counsel that "there was nothing we could do legally to prevent Moral Re-Armament, Inc., from supporting Up With People because of the breadth of Moral Re-Armament, Inc.'s Charter as revised in 1957." (39a).*

The complaint in this action was served on MRA on January 16, 1973, nine days before the Appellate Division, 1st Department, affirmed the first contempt order against Caux, but it was not until the pre-argument conferences in April and May 1974 before the Staff Counsel of this Court that MRA or its attorney knew for a fact that Mr. Tivnan by his own admission was receiving his instructions regarding this action and appeal directly from Caux and that Teixeira is one of its supporters.

In Alpine Pharmacy, Inc. v. Chas. Pfizer & Co., Inc., 481 F. 2d 1045 (1973) this Court stated (at p. 1051):

> " * * * One accepting employment as counsel in a class action does not become a class representative through simple operation of the private enterprise system. Rather, both the class determination and designation of counsel as class representative come

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*However, in fact, there was no amendment or revision of MRA's certificate of incorporation in 1957.

through judicial determinations, and the attorney so benefited serves in something of a position of public trust. Consequently, he shares with the court the burden of protecting the class action device against public apprehensions that it encourages strike suits and excessive attorneys' fees. * * *"

Not only did the same firm as Teixeira's attorneys previously advise Caux that there was nothing it could legally do to prevent MRA from supporting UWP "because of the breadth of Moral Re-Armament, Inc's Charter", as pointed out above, but Mr. Tivnan has also just argued in support of Caux's motion to reargue the second contempt proceeding before Mr. Justice Asch -- in the same proceeding of which the court file was requisitioned to the District Judge -- that Caux should be allowed to use the term "moral re-armament" notwithstanding the injunction and two contempt orders against such use, on the ground that "[i]t is no different than the concept of furthering a recognized religion or any other theory pursuant to which one seeks the betterment of the human race." (Tivnan aff., July 10, 1974, p. 7, N. Y. County Clerk's Index No. 4472-1971. That motion has not been decided because Caux obtained a stay pending appeal of all lower court proceedings.)

It is respectfully submitted that the principle which permits the argument of inconsistent theories upon which relief may be granted is not applicable here, because Mr. Tivnan is relying on diametrically opposed theories in two different courts at the same time to suit Caux's purposes: on this appeal the theory is that a literal reading of the different language in the respective certificates of incorporation of MRA and UWP proves that MRA's gifts to UWP were ultra vires, which suits Caux because it advanced the same defense in the injunction proceeding; whereas in the Supreme Court, New York County, Mr. Tivnan's latest theory advanced on behalf of Caux is that "moral re-armament" is simply the betterment of the human race, and therefore Caux is free to do the same thing as MRA and that MRA is not entitled to any monopoly on the concept by which it is identified. It is not disputed that the book, "Remaking the World", epitomizes the principles of Moral Re-Armament (46a, 65a). However, Teixeira disputes the view of Mr. Birdsall of UWP that MRA's charter empowers it "to disseminate Christian teachings (i.e. brotherhood, tolerance, morality, irrespective of race, creed or national origin)" (27a), as being "idealism" because in Teixeira's view "the

aim of MRA, until the establishment of UWP, was to change men and change nations . . ." (71a; emphasis added). The record shows that MRA is in basic agreement with Teixeira's view (47a-52a), but she is incorrect in thinking that the fact of incorporation of UWP changed MRA's purposes. If such change is for the betterment of the human race -- the theory advanced by Mr. Tivnan in the State court to enable Caux to engage in a program of "moral re-armament" -- then it is clear from UWP's certificate of incorporation (Ex. L, 33a) that its purposes are encompassed by the broad powers of MRA to engage in activities of a religious, charitable or educational nature to carry out the purposes of MRA, for no one could seriously maintain that the purposes of UWP are not beneficent. (Ex. Q, 35a).

The representation of the purported class by Teixeira will be unfair and inadequate to protect their interests, not only because she is a supporter of Caux, but because she has turned over the prosecution of this action and appeal to it, and Caux represented by Teixeira's counsel has been found in the State court to have misconducted itself in an attempt to deceive and mislead the public in order to divert MRA's contributions to itself (including potential contributions to MRA's Life Investment

Fund) justifying an injunction against it; and found in the contempt orders to have misconducted itself in continuing to disobey the injunction in order to defeat, impair, impede and prejudice the rights and remedies of MRA, which is charged with maintaining the funds of the purported class for their benefit during their lifetimes.

In Free World Foreign Cars, Inc. v. Alfa Romeo, 55 F.R.D. 26 (S.D.N.Y. 1972), cited by the Court below in its opinion (109a), the District Court held (at p. 29) that the provision for fair and adequate representation is not limited to legal representation, but also precludes existing or potential conflicts of interest. While ostensibly Teixeira was not interested in obtaining relief for herself, for her counsel rejected even greater relief than she seeks for herself in the complaint at the pre-argument conferences, since this action was instituted in January 1973 no other purported class member has joined her, and there is no evidence that any other purported class member is interested in diverting contributions from MRA or in defeating, impairing, impeding or prejudicing MRA's rights and remedies.

In continuing protracted litigation and appeals in the State courts, Teixeira's counsel are not concerned

about the enormous loss of time and expense to MRA, although Caux's persistent efforts to obtain the right to be identified as an organization carrying out the principles of Moral Re-Armament have been established in those proceedings to be detrimental to the rights and remedies of MRA, based on MRA's exclusive use in the United States for upwards of 35 years of its name, identity and identifying terms, which was all fully litigated in the injunction proceeding. As already noted above, the complete file of that proceeding through the first contempt order was before the District Judge on the motions for summary judgment.

Teixeira's counsel (at p. 10) contends that a proper determination of the class action motion should have provided for an inquiry. This argument was rejected in Wolfson v. Solomon, 54 F.R.D. 584 (S.D.N.Y. 1972) at pp. 589-90.

It is respectfully submitted that the prosecution of this action and appeal is motivated solely by the desire of Caux and its counsel to counter-balance the adverse effects of the injunction and contempt proceedings in the State court, and their hope to obtain by discovery in a class action the names and particulars of contributors

to MRA for their own purposes. In these circumstances the District Court's denial of class action designation was proper.

POINT III

THE COMPLAINT SHOULD BE DISMISSED ON THE GROUND THE CASE IS ENTIRELY VOID OF MERIT.

If the order granting summary judgment to UWP but leaving claims pending against MRA and Kidder is appealable as an appeal from an interlocutory order denying an injunction, then the entire order is before this Court and not merely the propriety of denying injunctive relief.

> Erving v. Virginia Squires Basketball Club, 468 F. 2d 1064, 1067 (2d Cir. 1972).

As stated in Hurwitz v. Directors Guild of America, Inc., 364 F. 2d 67, 70 (2d Cir. 1966), cert. den. 385 U. S. 971, this Court "may dismiss the complaint on the merits if its examination of the record upon an interlocutory appeal reveals that the case is entirely void of merit."

At the heart of Teixeira's case is her contention that future contributions by MRA to UWP would be ultra vires, because the goals and purposes of UWP do not further the goals and purposes of MRA (108a).

Both Teixeira (65a) and MRA (46a) are in agreement that the principles of Moral Re-Armament referred to in MRA's certificate of incorporation are epitomized in the book, "Remaking the World", the collected speeches of Dr. Buchman, copies of which were submitted to the District Court by both of those parties, and MRA quoted extensively from it in the record (47a-52a). Teixeira, who had extensive and active experience working with MRA (57a, 64a), summarized its aims as being "to change men and change nations" (71a), which is in agreement with MRA's view as set forth in its quotations from "Remaking the World" (47a-52a).

Thus, there is no disagreement between Teixeira and MRA as to what MRA should aim to do to carry out its purposes. It must be emphasized that neither contends nor could support the contention that MRA is a religion. For example, Dr. Buchman said in "Remaking the World": " * * * MRA is open to all and bars none. It is a quality

of life. You don't join and you can't resign. You live a life." (51a). Included in the purposes set forth in MRA's certificate of incorporation, which is in the record (45a, para. 5), is "the advancement of the Christian religion" (Art. 2.A) -- but the purposes do not stop there, for they depend on an understanding of the means and principles of Moral Re-Armament, which both Teixeira and MRA agree are set forth in "Remaking the World" and in their simplest form are summarized by Teixeira as changing men and changing nations, as noted above.

Similarly, MRA's purpose set forth in Article 2.B of its charter, "to disseminate Christian teachings", while not in any way expressly limited, is found in the context of a document subscribed by Dr. Buchman as one of MRA's original incorporators on March 1, 1941, and it is submitted that this purpose is equally subject to an understanding of the principles epitomized in "Remaking the World", which again are basically agreed upon by both Teixeira and MRA.

It is respectfully submitted that the most careful study of the language of the purposes clauses of MRA's certificate of incorporation standing alone,

without a basic understanding of the means and principles of Moral Re-Armament, will not aid in deciding this law suit. Likewise, a mere comparison of the language contained in the purposes clauses of the certificate of incorporation of MRA with the language contained in that of UWP is equally pointless, as in Teixeira's counsel's brief (pp. 4-6).

At page 14 of their brief Teixeira's counsel, referring to MRA's "Sing Out" program which it initiated in 1965 and which later became known as "Up With People" from its lead song, and then in 1968 resulted in the incorporation of UWP (56a-58a; 24a, 28a, 30a-35a), contend that "prior to the incorporation of UWP in 1968, these activities were used to disseminate the teachings and principles of the Moral Re-Armament movement as founded by Dr. Buchman, and, after the incorporation of UWP, these programs were used for other purposes."

It is respectfully submitted that Teixeira's case should fall on the rejection of that contention, because Teixeira and MRA are in basic agreement as to MRA's aims and the record discloses (58a, para. 17; Exhibit entitled "How to Create Your Own Sing-Out" handed up to

the District Court, and Ex. C annexed to Vondermuhll affidavit, both referred to at 58a, para. 16; 33a-35a) that the activities of UWP further those aims within the meaning of Article 2.D(2) of MRA's certificate of incorporation, which provides as follows:

> "To establish and support, or aid in the establishment and support, of any religious, charitable or educational associations or institutions, and to contribute money for religious, charitable or educational purposes in any way connected with the purposes of the corporation or calculated to further its purpose." (108a)

It should be noted that Article 2.D(2) of MRA's charter does not require that the recipient of contributions from MRA have purposes identical to MRA's, but only that its purposes shall be "in any way connected with" MRA's or "calculated to further" MRA's purposes.

The affidavit of Mr. Birdsall of UWP (21a-35a) and Exhibits M, N and Q annexed thereto, show that UWP has a broad and successful program with many activities. With respect to its concert activities, the Court's attention is respectfully invited to a comparison of MRA's song book entitled "How to Create Your Own Sing-Out" (supra) with UWP's concert program containing "Lyrics from the Show" at the centerfold (Ex. C to Vondermuhll aff., supra). The

message conveyed by those songs, first by MRA in its "Sing-Outs" which were heartily approved by Teixeira (30a-31a; 57a), and thereafter by UWP are completely identical insofar as the songs, "Up With People" and "What Color is God's Skin?" are concerned. Indeed, "Up With People" which the song book indicates was copyrighted by MRA in 1965 (p. 51) was so important that it became the theme song of the "Sing Out" program and then the name of MRA's entire musico-dramatic program (58a). Obviously that message is an important part of UWP's program now. The fact that UWP presents the identical messages conveyed by "Up With People" and "What Color is God's Skin?", as MRA did before it, should be sufficient to establish that UWP's purposes are calculated to further the purposes of MRA. It is respectfully submitted that a reading of the messages conveyed by UWP's other songs shows that they are also consistent with the principles set forth in "Remaking the World".

CONCLUSION

The order appealed from should be affirmed, and the complaint should be dismissed on the ground that it is entirely void of merit.

Respectfully submitted,

ROBERT L. TUTTLE
Attorney for Defendant-Appellee,
Moral Re-Armament, Inc.
36 West 44th Street
New York, N. Y. 10036
(212) 869-0920

August 7, 1974

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DATE: 8/7/74
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ATTORNEYS FOR: Kidder, Peabody

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ATTORNEY GENERAL

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